

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FREDERICK M. HILL,)	CASE NO. 5:19 CV 1640
)	
Petitioner,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	
)	<u>ORDER</u>
HAROLD MAY, WARDEN,)	
)	
Respondent.)	

CHRISTOPHER A. BOYKO, J.:

On July 18, 2019, *Pro Se* Petitioner Frederick M. Hill filed a Petition for the Issuance of a Writ of *Habeas Corpus* Pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) On September 3, 2019, Petitioner filed a Motion to Withdraw the Petition Without Prejudice. (Doc. No. 3.) Petitioner asserts he wishes to withdraw his Petition to correct errors and to “allow a meaningful argument to be presented to th[e] Court” at a later time. (*Id.*)

Rule 12 of the Rules Governing Section 2254 Cases provides that the Federal Rules of Civil Procedure are applicable to *habeas corpus* proceedings where such rules are not inconsistent with the Rules Governing Section 2254 Cases. Federal Rule of Civil Procedure 41 provides that a plaintiff may voluntarily dismiss an action by filing a notice of dismissal before the opposing party

has filed an answer or a motion for summary judgment, or at the “plaintiff’s request . . . by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(1), (2). Whether to grant a voluntary dismissal pursuant to Rule 41(a)(2) is a matter within the district court’s discretion. *Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). In determining whether to grant a dismissal without prejudice, the Court should consider whether the defendant would suffer ““plain legal prejudice”” as a result of a dismissal without prejudice. *Id.* (quoting *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212, 217 (1947)). In this case, voluntary dismissal of the Petition is appropriate because there is no evidence that Respondent will suffer prejudice from the dismissal.

Accordingly, the Petitioner’s Motion to Withdraw His Petition is Granted, and this action is dismissed without prejudice. The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith and that there is no basis on which to issue a certificate of appealability. Fed. R. Civ. P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

s/ Christopher A. Boyko

CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE

Date: November 6, 2019